

H9EAABAQS

Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

16 CR 357 (VSB)

5 ALEXI RAMON PILLASAQUA BAQUE,

6 Defendant.

7 -----x

8 New York, N.Y.
9 September 14, 2017
10:30 a.m.

10 Before:

11 HON. VERNON S. BRODERICK,

12 District Judge

13
14 APPEARANCES

15 JOON H. KIM
16 Acting United States Attorney for the
17 Southern District of New York
18 JONATHAN REBOLD
19 Assistant United States Attorney

20 KEN WOMBLE
21 Attorney for Defendant Baque

22 JOHN KALEY
23 Attorney for Defendant Baque

24 ALSO PRESENT: DAGOBERTO ARRANTIA, Spanish Language Interpreter
25

H9EAABAQS

Sentence

1 (Case called)

2 MR. REBOLD: Jonathan Rebold, for the government.

3 Good morning, judge

4 THE COURT: Morning.

5 MR. WOMBLE: For Mr. Baque, Ken Womble, along with
6 John Kaley.

7 THE COURT: Good morning, your Honor.

8

9 MR. KALEY: Good morning, your Honor.

10 THE COURT: Good morning.

11 Mr. Baque, you may be seated

12 MR. KALEY: Your Honor, Mr. Womble is going to be
13 carrying the laboring oar today. He was assigned to work with
14 me pursuant at the district's mentoring program.

15 THE COURT: Fantastic.

16 OK. So, Mr. Baque, if at any point in time -- can you
17 hear and understand the interpreter?

18 THE DEFENDANT: Yes.

19 THE COURT: If at any time you can't because there's a
20 malfunction with the equipment or you don't understand
21 something, just stop me and we'll either fix the equipment or
22 either I or your attorneys will explain whatever your question
23 is more fully to you. OK?

24 THE DEFENDANT: Yes.

25 THE COURT: Let me just review in connection with

H9EAABAQS

Sentence

1 today's sentencing the materials that I have. I have the
2 presentence investigation report which was prepared on
3 August 25. I have the defendant's initial sentencing
4 submission which was filed on August 31. I have the
5 supplemental submission which was filed yesterday which,
6 obviously, September 13 with various attachments including a
7 photograph of Mr. Baque's home. I have letters from family
8 members and a memo from Mr. Baque's supervisor in prison in
9 the, I guess it's the MCC for the place that he works, as well
10 as two, I guess they're certificates from captains who had
11 worked with Mr. Baque at a port in his home of Manta, Ecuador.

12 I also have the government's sentencing submission
13 which was filed on September 27th of this year.

14 I believe that all of the submissions have been filed
15 on ECF and have all the parties received them?

16 MR. REBOLD: Yes, your Honor.

17 MR. WOMBLE: Yes, we have.

18 THE COURT: OK. All right. Is there anything that
19 I'm missing? In other words, anything that I haven't mentioned
20 that I should have not.

21 MR. REBOLD: Not that we're aware of.

22 MR. WOMBLE: No, your Honor.

23 Just to add, we submitted those papers, supplemental
24 submission yesterday because we had just received those
25 materials yesterday. We apologize for getting them to the

H9EAABAQS

Sentence

1 Court so late.

2 THE COURT: That's OK. I happen to be looking at the
3 docket last night so I saw it in advance of this morning. So I
4 had read through the attachments.

5 Mr. Womble, have you read the presentence
6 investigation report and discussed it with your client?

7 MR. WOMBLE: Yes, I have.

8 THE COURT: Mr. Baque, have you read the presentence
9 report or had it read to you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you discussed it with your attorneys?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Have you had an opportunity to go over any
14 errors with them or anything else that you want to take up with
15 me with regard to the report?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: All right. Mr. Womble, do you have any
18 objections to the presentence report?

19 MR. WOMBLE: No.

20 THE COURT: All right. Mr. Rebold, do you have any
21 objections to the presentence report?

22 MR. REBOLD: No, your Honor.

23 THE COURT: All right. So I'll adopt the factual
24 findings in the report and the presentence report will be made
25 a part of the record in this matter and it will be placed under

H9EAABAQS

Sentence

1 seal. However, if an appeal is taken, counsel on the appeal
2 can have access to the sealed report without further
3 application to me or to one of my colleagues.

4 Mr. Baque, the law requires that part of the
5 determination of your sentence that I reference a certain set
6 of rules which are called the "sentencing guidelines". I
7 mentioned those during your guilty plea. They're essentially
8 rules that are put out by a commission that are meant to help
9 judges like myself when we're imposing sentence on individuals
10 convicted of a crime.

11 Now at some point the guidance guidelines had been
12 mandatory and I would have had to apply them in every case with
13 very limited opportunity not to. They're no longer mandatory.
14 However, they are a starting place for me. In other words, I
15 have to consider the guidelines first before I consider the
16 other factors that are contained in Title 18 U.S.C. Section
17 3553(A).

18 Now, Mr. Baque, you pled guilty to one count of a
19 superseding information which charges you with conspiring to
20 distribute and possess with intent to distribute cocaine while
21 onboard a vessel subject to the jurisdiction of the United
22 States. In determining your guidelines I applied the
23 November 1, 2016 guideline manual. The statute in question, in
24 other words, statutes to which you've pled guilty, do not have
25 a specific guideline that apply to them. So pursuant to 2X5.1

H9EAABAQS

Sentence

1 if the offense is a felony of which no guidelines exist, then
2 the most analogous offense guideline can be applied. In this
3 case that's Section 2B1.1 of the sentencing guidelines.

4 Now since you're being held responsible for
5 approximately 901 kilograms of cocaine, the base offense level
6 is 38. The offense level is then reduced by four levels
7 pursuant to 2D1.1A53 because of your mitigating role in the
8 offense, and as a result, the base offense level is 34.
9 Because you had a minor role here, two levels are taken from
10 that and an additional three levels are removed from the
11 calculation making the total offense level of 29 and the three
12 levels are for your acceptance of responsibility.

13 You have no criminal history points. The maximum fine
14 here is 30,000 to \$1 million. The resulting guideline range is
15 87 to 108 months.

16 Do the parties agree that that is the resulting
17 guideline range?

18 MR. REBOLD: Yes.

19 MR. WOMBLE: Yes.

20 THE COURT: OK. Mr. Baque, with regard to departures
21 under the sentencing guidelines, I have considered whether or
22 not a departure would be warranted here. And although I the
23 power and authority to depart, I don't find that there are
24 grounds warranting departure. However, I still have the
25 ability to grant a variance. In other words, to vary from the

H9EAABAQS

Sentence

1 guideline range and give you a lesser sentence or an increase
2 in sentence but a lesser sentence is what probation recommends
3 and what your attorneys have requested.

4 Now, let me hear from the parties with regard to
5 sentencing. Does the government wish to be heard?

6 MR. REBOLD: Just briefly, your Honor. I know I spoke
7 at the sentencing for co-defendant Lopez and I think our
8 sentiments remain the same. But just for the benefit of
9 Mr. Lopez's counsel, the government acknowledges -- excuse
10 me -- for Mr. Baque's counsel.

11 The government acknowledges that Mr. Baque's role is
12 less significant than almost any other person who is part of
13 this drug tracking organization. We also don't dispute and we
14 are entirely sympathetic to the fact that Mr. Baque committed
15 this crime out of financial disoperation and that he did so
16 because he grew up in an area where the economy wasn't great to
17 begin with and it was ravaged by the an earthquake which affect
18 their ability to provide for their families and really survive
19 in an adequate way through their normal legal form of commerce.

20 That said, we also think it bears focus that over 900
21 kilograms of cocaine were trafficked on a vessel that Mr. Baque
22 knowingly boarded and that he made a decision to partake in a
23 much larger criminal enterprise and knew what he was getting
24 himself into and entirely foreseeable that that cocaine or at
25 least a portion of it would work its way across our borders.

H9EAABAQS

Sentence

1 So, in light of the circumstances that led Mr. Baque
2 to commit this offense, the government agreed the following was
3 appropriate to offer a charge much less serious than the
4 (b)(1)(a) offense which would carry a ten-year mandatory
5 minimum. And we further agreed that it was appropriate to
6 provide him with a minor role adjustment. And beyond that we
7 even agree that it's appropriate that the defendant receive a
8 sentence below the guidelines level.

9 It's difficult for the government to assess an
10 appropriate number in any case which is why we often either say
11 "guidelines" or "above guidelines" or "below guidelines"
12 without ever assigning a number. And I think given the nuances
13 and complexities of these types of cases and the understandable
14 motivations which caused people like Mr. Baque to commit these
15 offenses, we think that it is appropriate, of course, for the
16 Court to go below the guidelines.

17 We take some degree of exception that the appropriate
18 number is time-served. We have concerns that if defendants
19 continue to get time-served it will create an incentive, if not
20 for Mr. Baque to go and try to do this but for other people in
21 his shoes to sort of give in to the presently somewhat
22 irresistible temptation to engage in the conduct that's causing
23 so much cocaine to cross into the United States borders. And
24 so I don't know what the right number is which is why we have
25 recommended without assigning a number that a below guidelines

H9EAABAQS

Sentence

1 sentence is appropriate. I think that's really for the Court
2 to decide. We think it's somewhere in excess of time-served.
3 We certainly think it's below the guidelines range though.

4 And with that, we sort of defer to the Court's
5 discretion.

6 THE COURT: OK. Let me ask, I know that we have had
7 discussions in the past with regard to co-defendants, but do
8 you have any more color with regard to how much time Mr. Baque
9 after his sentence, how much time Mr. Baque might spend in
10 Immigration custody before he is deported back to Ecuador?

11 MR. REBOLD: I don't know the answer to that question,
12 your Honor. I know that just prior to today's proceedings both
13 defense counsel and I discussed the possibility of the
14 government helping to sort of grease the wheels of deportation
15 by filing removal papers and I don't think the government has
16 any problem with that. We're just not prepared to do it today.

17 THE COURT: Sure.

18 MR. REBOLD: But with or without the government's
19 assistance, I really don't have an estimate as to how long
20 Mr. Baque is likely to remain in the custody of the United
21 States before he is deported.

22 THE COURT: OK. All right. Thank you.

23 Mr. Womble, do you wish to be heard

24 MR. WOMBLE: Thank you, your Honor.

25 I actually want to piggyback on the sentiments of the

H9EAABAQS

Sentence

1 government to a large degree. We do argue that time-served in
2 this case is sufficient but not greater than necessary. I
3 think from the Court's sentence for the co-defendant Lopez
4 which is in line with a number of other sentences that have
5 been handed down recently generally in the range of two years
6 to 18 months, that's the equivalent essentially of time-served
7 for Mr. Baque.

8 I don't want to belabor the points that were made in
9 our submission but to say we were presented yesterday with a
10 photograph that we submitted yesterday to the Court. We were
11 presented with this photograph showing Mr. Baque's home. And I
12 think Mr. Kaley and I, we're often in a position where we deal
13 with poverty here in our country. I think what we see with
14 Mr. Baque is a level of poverty that is drastically different
15 than what we're used to. There used to be a chicken coop and
16 the bathroom, the outhouse for the home used to be in the back
17 yard and that has been swallowed up by the river.

18 He is a man and I think from the letters that you see,
19 this is a man that desperately wants to get back to his family.
20 His family desperately wants him back. He is, I think as well
21 from the records from both the sea captain and ship captains,
22 from Manta, as well as the letter from Bureau of Prisons, this
23 is a man with a very strong work ethic. He admittedly did
24 something very wrong here and he has been punished for that.
25 He understands that the decision that he made that led him to

H9EAABAQS

Sentence

1 sitting here today has caused a great deal more damage to his
2 family than he ever wanted and will ever want again. He is a
3 simple man who wants to return to his simple life and he wants
4 to continue fishing so he can continue to support his family.

5 So, your Honor, again, I think a sentence of
6 time-served is, it also makes sure that there's no disparity
7 between Mr. Baque and his co-defendant. We are in not going to
8 suggest that Mr. Lopez is the captain of the ship. Although, I
9 know these were three men who were, I think as the government
10 said, were put in a position where they were made an offer that
11 was very, very difficult to refuse. They all went on that
12 boat. They know what they did. Mr. Baque took responsibility
13 for that. He stands before the Court and we respectfully ask
14 the Court for a sentence in line with his co-defendant and in
15 line with a number of the other sentences that have been handed
16 down in this district recently. And we ask for time-served as
17 a sentence sufficient but not greater than necessary in this
18 case.

19 THE COURT: OK.

20 MR. WOMBLE: Thank you.

21 THE COURT: All right. Thank you.

22 Mr. Baque, would you like to make a statement on your
23 own behalf?

24 THE DEFENDANT: Yes, your Honor.

25 Your Honor, I apologize from the bottom of my heart.

H9EAABAQS

Sentence

1 I did harm to my family in order to help them and I apologize,
2 your Honor.

3 THE COURT: All right. Thank you, Mr. Baque.

4 Is there any reason either counsel is aware of that
5 sentence should not be imposed at this time?

6 MR. REBOLD: No, your Honor.

7 MR. WOMBLE: No, your Honor.

8 THE COURT: All right. As I stated, Mr. Baque's
9 guideline range is 87 to 108 months. Under the Supreme Court's
10 decision in Booker and its progeny, the guideline range is only
11 one factor that I must consider in deciding the appropriate
12 sentence. I'm also required to consider the other factors set
13 forth in 18 U.S.C. Section 3553(a) and I have done so.

14 Those factors include but are not limited to the
15 nature and circumstances of the offense and the personal
16 history and characteristics of the defendant as each defendant
17 must be considered individually as a person.

18 I'm also required to consider the seriousness of the
19 offense, promote respect for the law, provide just punishment
20 for the offense and afford adequate deterrence to criminal
21 conduct and avoid unwarranted sentencing disparities, among
22 other things.

23 Now I note the probation department has recommended a
24 sentence of time-served which obviously is a variance from the
25 guidelines. The government recommends a significant sentence

H9EAABAQS

Sentence

1 but one that is below the guideline range but is more than time
2 served. And the defendant has requested a sentence of
3 time-served.

4 Now, first I want to discuss the circumstances of the
5 offense.

6 Mr. Baque, as your attorney acknowledged, this is a
7 very serious offense. You participated in a conspiracy to
8 distribute and possess with intent to distribute 901 kilograms
9 or over 1900 pounds of cocaine. Now, I think it's fairly clear
10 that when you boarded that ship you weren't aware exactly how
11 much cocaine there was going to be. But based upon the size of
12 the vessel and the number of individuals who were part of the
13 crew, it was going to be a substantial amount of cocaine. You
14 also had an idea that you were being paid more than you would
15 typically earn in a year, as were the other individuals. So it
16 was a significant amount of cocaine. Obviously narcotics
17 trafficking has a disastrous effect on society. It destroys
18 people's lives, families and neighborhood.

19 Now there's no evidence of violence here but
20 oftentimes narcotics trafficking and violence go hand in hand.
21 But again, if there's evidence of any violence here and there
22 is no question that the government I think is correct in its
23 assessment in its letter that you and your co-defendants did
24 play a vital role, albeit, a minor role, a vital role in the
25 narcs trafficking because without individuals who are willing

H9EAABAQS

Sentence

1 to transport the drugs, the drugs would be much more obsolete.
2 It would be difficult if not impossible to get them into this
3 country and into other countries.

4 However, I note from the presentence report and
5 submissions as I mentioned, your minor role. You were
6 recruited in large part by exploiting the economic conditions
7 of your country and, specifically, of your village itself.
8 After the earthquake my understanding is from the submission I
9 received in this case, as well as others, that your livelihood
10 which is fishing became extremely difficult and in dangerous
11 because of the aftershocks of the dangerous tsunami. So many
12 captains did not decide to venture out at that time, and
13 therefore, leaving a significant gap in the work that was
14 available.

15 So when you were approached with this offer I have no
16 doubt that it was and I think your lawyer, that you viewed it
17 as something that was hard to resist and, obviously, you didn't
18 resist that. So I will take that into consideration in
19 deciding what is an appropriate sentence here.

20 But now let me discuss a little bit more in detail
21 your personal history and characteristics. All appear to be
22 agree that you were raised and live in an impoverished
23 environment. You grew up in a three bedroom house with no
24 electricity and no running water with your parents and three
25 sisters, your grandparents and three uncles. It's not disputed

H9EAABAQS

Sentence

1 that your family at times did not have enough money for
2 clothing and at times food. At 16 you dropped out of school
3 and began working so that your older sister could complete her
4 education. There's no dispute that you do provide support for
5 yourself and your family by fishing. And that at times you
6 provide your sisters with a little extra money to help them
7 support their household.

8 You also appear to be a hardworking individual both
9 from the submissions I received recounting the work that you
10 did in your home country but also from the letter from the food
11 service department where your supervisor states that despite
12 the language barrier, he is hardworking. He has been a
13 hardworking and diligent person during the tenure with us. He
14 has worked on various sections of the kitchen, including the
15 warehouse. He has shown his sharp skills as a worker and
16 individual and he is a very enthusiastic and respectful that
17 gets along with other inmates and staff. He always gives one
18 hundred percent to his work and available at all times when
19 requested.

20 So I'm going to take that into consideration also that
21 despite your circumstances, being out of your country in
22 another country that you never expected to be in and despite
23 the fact that you're incarcerated that you decided to not only
24 work but to diligently work at the job that you had while
25 incarcerated.

H9EAABAQS

Sentence

1 I've also read letters of your family members. Now
2 the letters don't appear to be directly related to sentencing.
3 They appear to be, some of them, letters addressed to you. So
4 as I understand the letters, you turned 27 while you were in
5 prison. Those letters expressed a level of love for you and
6 expressed the fact that your family members miss you both in
7 terms of economically but also in terms of emotionally.

8 I've also read the certificates by the two captains
9 for whom you worked when you were in your country. And they
10 attest to your good character as a worker. Specifically, they
11 state that you are an upright, honest, respectful and stable
12 person, that you are responsible and that you've demonstrated
13 over the years from the work that you've done with them those
14 qualities. I'm going to take those letters into consideration
15 also.

16 Also, although we're not able to give a specific
17 number, there is no doubt that you will have to spend some
18 additional time in custody. And I'll say if there's anything
19 I'm not sure or aware of anything that I can do but as your
20 lawyers and the government work through whatever issues they
21 are going to work through to try and expedite your deportation
22 from this country, if there is anything I can do to facilitate
23 that, I will endeavor to do that.

24 Now, Mr. Baque, will you please rise for the
25 imposition of sentence.

H9EAABAQS

Sentence

1 It is the judgment of this Court that you be committed
2 to the custody of the Bureau of Prisons for a period of
3 time-served. It appears to me based upon your specific
4 circumstances that this sentence is sufficient for both
5 specific and general deterrence. Your incarceration will be
6 followed by three years of supervised release.

7 You may be seated.

8 I believe that this sentence is sufficient but not
9 greater than necessary to comply with the purposes of
10 sentencing under 18 U.S.C. Section 3553(A).

11 There will be no fine because the probation department
12 has recommended no fine because of your financial situation.
13 However, you must pay a mandatory \$100 special assessment.

14 I note that in the plea agreement it did indicate that
15 you've admitted to forfeiture allegations in the information.
16 However, let me ask, will the government be pursuing forfeiture
17 here?

18 MR. REBOLD: No, your Honor.

19 THE COURT: All right. So there will be no
20 forfeiture, Mr. Baque.

21 Now, with regard to your supervised release and I
22 understand that in all likelihood you are going to be deported
23 but as a part of the supervised release term, it is a
24 mandatory. And to the extent you're not deported, the standard
25 conditions will apply, as well as the special conditions on

H9EAABAQS

Sentence

1 page 17 of your presentence report, in addition to the
2 mandatory conditions on pages 15 and 16 of your PSR will also
3 be imposed.

4 Does either counsel know of any legal reason why this
5 sentence should not be imposed as stated?

6 MR. REBOLD: No, your Honor.

7 MR. WOMBLE: No, your Honor.

8 THE COURT: Mr. Baque, you do have a right to appeal
9 your conviction and sentence. The notice of appeal must be
10 filed within 14 days of the judgment of conviction. If you are
11 not able to pay the cost of an appeal, you may apply for leave
12 in forma pauperis. If you request, the clerk of court will
13 file a notice of appeal on your behalf.

14 Mr. Baque, obviously, you're getting a substantial
15 break from the guideline range here. However, it's my view
16 that based upon your circumstances that that's the appropriate
17 sentence but let me just emphasize something for you.

18 If you decide to participate in this type of activity
19 and come back into this country you are not going to get
20 another break. So the next time you come back in all
21 likelihood you will be facing at least ten years if not more
22 than that. I'm making these comments so that if you don't
23 appear before me, if you appear before somebody else that that
24 judge will be aware of what I've said here today.

25 The government pointed out in its letter that in other

H9EAABAQS

Sentence

1 jurisdictions and other parts of the country where individuals
2 who have transported drugs like you have either by boat or
3 otherwise have been sentenced to much longer sentences,
4 sentences that are measured in terms of years and not months,
5 some ten years, some longer. So you should understand that you
6 are, obviously, getting a break today.

7 Again, I feel that based upon your circumstances it is
8 an appropriate sentence but what I would like you to do when
9 you get back to your home country is to make sure that other
10 young men and other men in your community are aware of this. I
11 know it's a temptation that's difficult to resist because of
12 the amount of money that you're being offered. But you can
13 give personal accounts to what the impact has been on you, your
14 family and your life, and you can also indicate to folks that
15 you got a break but others have not. I hope that you take that
16 to heart when you return to your country, and I wish you luck.

17 Is there anything else? Are there some open counts
18 here?

19 MR. REBOLD: Yes, your Honor. At this time the
20 government moves to dismiss the open counts in the underlying
21 indictment.

22 THE COURT: OK. Those counts will be dismissed. Is
23 there anything else?

24 MR. WOMBLE: No. Thank you, your Honor.

25 THE COURT: Thank you.

H9EAABAQS

Sentence

1 Mr. Baque, good luck. We'll stand adjourned.
2 THE DEFENDANT: Thank you very much, your Honor.
3 (Adjourned)

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